

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

Call to Order: By **CHAIRMAN BILL GLASER**, on March 5, 2003 at 3:00 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Bill Glaser, Chairman (R)
Sen. Bob Story Jr., Vice Chairman (R)
Sen. Jerry W. Black (R)
Sen. Edward Butcher (R)
Sen. Mike Cooney (D)
Sen. Jim Elliott (D)
Sen. Royal Johnson (R)
Sen. Jeff Mangan (D)
Sen. Don Ryan (D)
Sen. Tom Zook (R)

Members Excused: None.

Members Absent: None.

Staff Present: Tari Elam, Committee Secretary
Connie Erickson, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 366, 2/25/2003; HB 400,
2/25/2003
Executive Action: HB 366

[PLEASE NOTE: THERE IS APPROXIMATELY ONE MINUTE OF RECORDING TIME MISSING FROM THE BEGINNING OF TAPE ONE; THE MICROPHONE WAS NOT WORKING PROPERLY.]

HEARING ON HB 366

Sponsor: REPRESENTATIVE PAUL CLARK

Proponents: Lance Melton, Executive Director, Montana
School Boards Association (MTSBA)
Dave Puyear, Executive Director, Montana
Rural Education Association (MREA), *in
absentia*

Opponents: NONE

Informational Witnesses: NONE

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 1.1 - 3.4}

REPRESENTATIVE PAUL CLARK, HD 72, Thompson Falls, brought forward a bill which will allow school board trustees to hold quarterly meetings rather than four meetings in specific months. **REP.**

CLARK stated, under present law, trustees must meet during specific months. He explained there have been occasions where two of three trustees had emergencies occur and were unable to attend. Due to much of Montana being so remote in nature, in addition to inclement weather and other events, violation of the statute can occur through no intentional fault of the trustees. He also explained the bill was originally intended for class 3 school districts, however, it also applies to class 2 districts. He believes most larger districts will continue to meet on the traditional schedule, but if contingencies arise the bill will allow some latitude.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 3.5 - 6}

Lance Melton, Executive Director, MTSBA, conveyed his organization's support of the bill. He stated the bill is actually a housekeeping measure; there are no reductions in the number of meetings which occur. While not certain of the exact history of the statute's requirement, he believes the original dates were chosen to correlate with school levy elections (April)

and final budget adoption (August). Since there is no longer a direct correlation, he believes the modifications are appropriate. **Mr. Melton** urged the Committee recommend Do Concur on the bill.

Mr. Melton stated his comments on this date are supported by **Dave Puyear, MREA**, as well.

Dave Puyear, Executive Director, MREA, in absentia, conveyed his organization's support of **HB 366**.

Questions from Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Counter: 6.4 - 7.0}

SENATOR JIM ELLIOTT, stating quarterly is not defined in the bill, asked **Mr. Melton** if he was at all troubled by that. **Mr. Melton** replied he was not because quarterly means once every three months, however, he would have no objections to a definition being included.

Closing by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 7.1 - 7.4}

REP. CLARK expressed appreciation to the Committee for a good hearing. He believes the bill allows for some flexibility which may be necessary due to unforeseen events.

HEARING ON HB 400

Sponsor: REPRESENTATIVE KIM GILLAN

Proponents: NONE

Opponents: Lance Melton, Executive Director, MTSBA
Dave Puyear, Executive Director, MREA, in
absentia

Informational Witnesses: NONE

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 7.8 - 12}

REPRESENTATIVE KIM GILLAN, HD 11, Billings, brought forward a bill requiring school trustees to adopt a policy establishing procedures for canceling a regular or special trustee meeting, including procedures and time lines for notifying voting and nonvoting trustees and members of the public. **REP. GILLAN** stated this bill will fine tune existing statute. She explained this modification is necessary because present law delineates how special meetings may be called, however, there is no corollary for cancellation of meetings. She noted the measure is not prescriptive, but simply requires a district establish procedures and policies. **REP. GILLAN** conveyed a concern expressed by another House member, stating she suggests page one, line 21's, terminology be changed. Referring to events which occurred in Billings, she stated this bill is not punitive in nature it simply requires a policy be enacted.

Opponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 12.1 - 15.3}

Lance Melton, Executive Director, MTSBA, conveyed his organization's opposition to the bill. He expressed his apologies to the sponsor, stating he thought concerns raised on the House side were to be addressed, however, some were not. He also noted this bill seems to be directed solely toward events which occurred in Billings. Beyond this, however, **Mr. Melton** explained the bill explicitly targets school boards as a specific type of agency under the "open meeting" laws. He noted all agencies have a duty to comply with the constitution on this issue. He also stated a school board's decision to cancel a meeting inconveniences its' populace to a lesser degree than any other type of agency. He would prefer, if the legislature decides to establish this requirement, all agencies be required to follow the rule. He also suggested the requirement be placed in Title II where the "open meeting" laws apply to everyone. He urged the Committee recommend Do Not Concur.

Mr. Melton again conveyed his comments are on behalf of **Dave Puyear, MREA**.

Dave Puyear, Executive Director, MREA, in absentia.

Questions from Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Counter: 15.5 - 31.5}

{Tape: 1; Side: B; Approx. Time Counter: 1 - 11.9}

SENATOR TOM ZOOK, referring to page one, line 22, stated he is not aware of when a school district would have non-voting

members. He asked **REP. GILLAN** to explain. **REP. GILLAN** responded another House member indicated there are non-voting members in her district and requested the term be added. **SEN. ZOOK**, conveying his own experience on an eleven member school board, and again stating he could not think of an instance where there were non-voting members. **SEN. ZOOK** also provided an example where two of three members could not attend due to last minute contingencies, asking if the one who does arrive may simply put a sign on the door. **REP. GILLAN** explained the intention of the bill is simply to require some type of notice be provided. She also stated she was shocked by objections raised by **Mr. Melton**, as, while the bill was in the House, there was no indication of opposition. **SEN. ZOOK**, providing an example of an unexpected fire preventing any one from attending, asked what the board would do. **REP. GILLAN**, again stating the law is not prescriptive, replied it is simply a requirement that policies be adopted. The policy may be that someone simply place a notice on the door; it need not be a board member specifically, but someone.

SENATOR MIKE COONEY, referring to **REP. GILLAN's** request regarding the modification of terminology, asked if the language appears on page one, line 21. **REP. GILLAN** replied in the affirmative. **SEN. COONEY** asked if: 1) the phrase "including but not limited to" be stricken; and 2) the phrase "which includes" be inserted. **REP. GILLAN** replied in the affirmative. **SEN. COONEY**, referring to concerns raised by **Lance Melton**, asked **REP. GILLAN** if she had a response. **REP. GILLAN** replied in the affirmative. She indicated during the House hearing on the bill and subsequent discussion on the floor, she does not remember a single representative of **MTSBA** or **MREA** coming forward with concerns. She is troubled by the fact that she was not given an opportunity to address any concerns. She is also concerned by **Mr. Melton's** comments regarding inconvenience to the public, because the public votes and the public pays the taxes. Out of respect for those individuals, the provision of a notice is very simply a courtesy. Regardless of the events which these modifications are predicated upon, the discovery that no legislation exists to provide guidance allows an opportunity to do so.

SENATOR EDWARD BUTCHER, referring to **Mr. Melton's** opposition to the bill's being specific rather than general in scope, stated 20-3-322 of the Montana Code already has a requirement regarding notice; this bill simply modifies the language by providing an outline for requirements on cancellation. He asked **Mr. Melton** for clarification on "to what" he was actually objecting. **Mr. Melton** stated his organization's position on the bill is this is a constitutional issue: open meeting laws. He stated they are

troubled by the fact that Title 20 has special provisions on bidding that are different from every other bidding provision, and a different provision on open meeting laws which is more prescriptive on local control than any other state agency. He finds it very problematic that Title 20 takes issues which should be of general applicability to all agencies and makes them specific to a particular agency. **Mr. Melton** stated he was informed the bill would have amendments which made it generally applicable. He apologized for not contacting **REP. GILLAN** before the hearing but, none-the-less, special rules are being enacted solely for school boards. **SEN. BUTCHER** asked whether **Mr. Melton** had a problem with page two, lines 2-4, of the original bill. **Mr. Melton** stated, had the original bill included the language (now stricken), he would most certainly have been in opposition.

SEN. ELLIOTT asked if **Mr. Melton** had seen the bill prior to the hearing. **Mr. Melton** replied he had seen the bill, he simply did not have the bill with him at the moment. **SEN. ELLIOTT** asked if he were correct in understanding that **Mr. Melton** would have objected to language on page two, lines 2-4. **Mr. Melton** replied in the affirmative. **SEN. ELLIOTT** asked if **Mr. Melton** appeared at the House Committee hearing; and, if not, why. **Mr. Melton** replied he did not attend the hearing because he was told the bill would be amended in a manner to ensure its' applicability to all agencies. He again referred to **REPRESENTATIVE BOB LAWSON's** bill, stating schools do not mind having to follow the rules, they simply do not believe special rules should apply to them solely. He believes there is something wrong with saying school boards are the only agency in the state of Montana which must provide the public with notice of a meeting's cancellation. **SEN. ELLIOTT**, noting **Mr. Melton's** strong position, stated he did not have a problem with beginning this process with a single agency. While he would like to see the requirement extended to all agencies, that cannot be accomplished under the title of the bill. **Mr. Melton** agreed the rule cannot be extended given the present title, but, regardless, he believes it does single out school boards. **SEN. ELLIOTT**, noting his inexperience with school boards specifically, asked **Mr. Melton** what would result if a policy were established and not followed. **Mr. Melton** stated there could be a claim against the district for violation of the open meeting laws. Since this bill dictates how a school district must comply with the open meeting laws it could well lead to litigation. He stated his experience is when people believe a policy has been violated they will do anything possible to challenge the violation. In other words, this may lead to multiple lawsuits in District Court or multiple challenges before the county supervisor. He again stated his primary objection is due to the bill's requirement that a policy will be adopted and must contain certain language. He sees this as a violation of

local control. **SEN. ELLIOTT** inquired if the bill were amended to read, in essence, a school board will adopt written policies and procedures for cancellation of meetings, would **Mr. Melton's** opposition terminate. **Mr. Melton** stated he would still be concerned with the bill's specific application to schools. However, given the title of the bill, and barring any other possibility, he would be appreciative of the language modification suggested by **SEN. ELLIOTT**.

SENATOR BOB STORY stated his understanding of the bill is it requires a school district to establish a policy regarding the cancellation of meetings. He asked **REP. GILLAN** if her perception is the cancellation of a meeting is an official act of the board. In other words, would the board actually have to meet in order to cancel the meeting. **REP. GILLAN**, stating **SEN. STORY** made an excellent point, indicated that is the reason the bill is not prescriptive. Her intention was to fine tune existing statute by requiring a policy be in place with an emphasis on providing the public with notice. **SEN. STORY** stated his concern arises because someone will have to make a decision. He asked if that particular decision is an official action? **REP. GILLAN** replied her view is the act is official. Although she understands the realities of living in Montana where many meetings are cancelled due to weather, in the case of Billings, meetings were called and two hundred tax payers would arrive to participate and meetings were cancelled. It is her intent the public be provided with some predictability. The bill does not require a reason be given; simply, notice be provided. **SEN. STORY**, referring specifically to events in Billings, asked how decisions to cancel were made. **REP. GILLAN** stated there was no procedure. Meetings were announced on television. Numerous people would arrive and a security guard would announce there was no meeting. No vote was taken, the meeting was simply cancelled by "someone." When other board members arrived, they had no idea the meeting was cancelled nor why. She emphasized, again, language in the original bill perceived as too prescriptive in nature was removed to protect local control.

SEN. STORY indicated **Mr. Melton** wished to answer the same question. **Mr. Melton**, referring again to events in Billings, stated the Chair cancelled the meetings because current law provides that only the Chair may call the meeting. The only other manner in which a meeting may be cancelled is when a quorum fails to assemble.

SEN. ELLIOTT asked **Connie Erickson** what liability exists for cancelling a meeting at which no decision has been made other than to cancel. **Ms. Erickson** replied she was uncertain. She deferred to **Mr. Melton**. **Mr. Melton** stated there would be no

damages, per se. There would be a right to institute suit for violation of the open meeting laws which, if the party prevails, present statute guarantees the awarding of plaintiff attorney fees. **Mr. Melton** guarantees someone will say this is a violation of the open meeting laws and it's about the public's right to know. The assertion that somebody cancelled a meeting without authority will result in a suit being filed. The attorney knows the plaintiff does not have to pay their bill, but the school district will. He stated, if a school district is smart they will admit they violated the law and incur about \$1,000 in attorney fees. If the district tries to fight the claim, it will be \$150 per hour for however many hours it takes until the plaintiff prevails.

SEN. COONEY, referring to **Mr. Melton's** response to **SEN. ELLIOTT**, inquired whether he believes this bill subjects school boards to more exposure. **Mr. Melton** replied in the affirmative.

SEN. COONEY asked whether **REP. GILLAN's** intent was to ensure school boards do not have as much exposure. **REP. GILLAN** replied in the affirmative, stating she thought this measure would prevent litigation. She does not share the opinion of **Mr. Melton**.

SENATOR DON RYAN, referring to **Mr. Melton's** testimony on the ownership of a meeting, asked if it is current practice in Montana that only those who call a meeting may cancel the meeting. **Mr. Melton** stated he has always advised school boards that people with the statutory authority to call the meeting are the ones with the authority to cancel prior to a quorum being convened. Once a quorum has convened, then the board may cancel. **SEN. RYAN**, referring to **Mr. Melton's** response, asked if this provides the public with a specific person(s) to direct their anger or frustration toward in the event a meeting is cancelled. **Mr. Melton** replied that was certainly the result in Billings.

Closing by Sponsor:

{Tape: 1; Side: B; Approx. Time Counter: 12 - 16.4}

REP. GILLAN stated this bill was never intended as a catalyst for litigation. Its' purpose was to offer the public some form of accountability. Additionally, the bill was not intended as an attack on any individual, it was intended to provide the public with a sense of process. Although noting she has no legal background, **REP. GILLAN** does not share **Mr. Melton's** concerns. She would like the state to learn from the events in Billings. She has children in those schools, and has no motivation to punish the people of that district. She believes the events

provided an opportunity to learn and make changes. While the history of Montana education is centered on local control, local control does not mean solely the control of the local school board. It also means control of the local voters and tax payers. She also expressed concern over suggestions the bill somehow arose from nowhere; noting, again, there was a public hearing at which no person in opposition appeared. Members of the House Committee suggested terminology changes and those requests were honored, but no other concerns were raised. **REP. GILLAN** expressed her appreciation to the Committee and requested they consider the bill as presented.

EXECUTIVE ACTION ON HB 366

{Tape: 1; Side: B; Approx. Time Counter: 17 - 20}

Motion: SEN. ZOOK moved that HB 366 BE CONCURRED IN.

Discussion:

SEN. JOHNSON requested permission to pose a question to **Mr. Melton**; without objection. **SEN. JOHNSON** inquired about the reason behind the bill's request. **Mr. Melton** replied there have been a number of occasions where a three member board has great difficulty bringing together a quorum during certain months. These events provided the idea, however, closer analysis suggests there should be change because the underlying justifications have changed. **SEN. JOHNSON** inquired about the availability of certain technology in remote areas. **Mr. Melton** replied in the affirmative.

SEN. ELLIOTT requested permission to pose a question to **Mr. Melton**; without objection. **SEN. ELLIOTT**, indicating the bill's requirement that the board meet quarterly does not prohibit a meeting on March 30 and a meeting on April 1. **Mr. Melton** replied in the affirmative. **SEN. ELLIOTT** asked whether it is more beneficial to have the meetings spread out. **Mr. Melton** stated he believes local school board members will see the same common sense argument and will make the appropriate choice on when to schedule meetings.

Vote: Motion carried 9-1 with JOHNSON voting no. CHAIRMAN BILL GLASER to carry.

ADJOURNMENT

Adjournment: 4:30 P.M.

SEN. BILL GLASER, Chairman

TARI ELAM, Secretary

BG/TE

EXHIBIT (eds46aad)